REMARKS

The application has been amended to place the application in condition for allowance at the time of the next Official Action.

Claims 1-16 were previously pending in the application. Claims 4, 5 and 10-16 are canceled; leaving claims 1-13 and 6-9 for consideration.

Cancelling claims 10-16 is believed to obviate the specification objection noted in paragraph 1. of the Official Action.

Claim 1 is amended to clarify that the incision is longitudinal as seen in Figure 2 of the application as filed. Accordingly, withdrawal of the 35 USC 112, second paragraph rejection is respectfully requested.

Claims 1-16 were rejected under 35 USC 103(a) as being unpatentable over TALLARIDA et al. 6,527,754. That rejection is respectfully traversed.

Claim 1 is amended to include the subject matter of claim 5 and intermediate claim 4 and recites that a portion of the diffusion duct closest to the reservoir is radial relative to a wall of the reservoir and that the bend of the diffusion duct is inside the casing.

By way of example, as seen in Figure 3 of the present application, reproduced below, the bend 27b of diffusion duct 27 is inside the casing 17. In addition, the portion of the

diffusion duct 27 between the bend 27b and the reservoir 15 is radial to a wall of the reservoir.

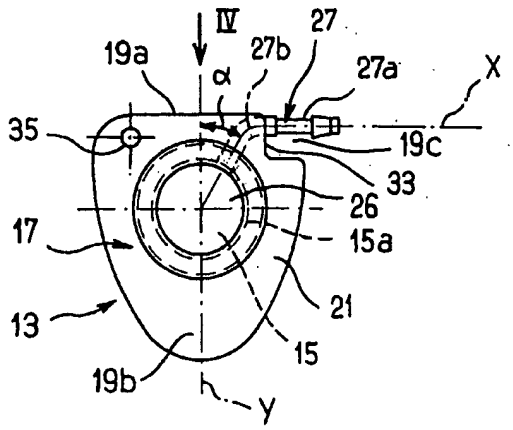


FIG_3

The above-recited configuration of the diffusion duct enables the device of the present invention to reduce trauma when such device is inserted into an incision in the body. That is, the recited position of the diffusion duct enables a rapid and simplified connection of the terminal portion of the diffusion duct to a catheter, and the practitioner can readily close the incision once the device is placed beneath the skin. See for example page 4, lines 8-24 of the application as filed.

The Official Action recognizes that TALLARIDA fails to disclose a diffusion duct being substantially parallel with the side of the triangle. The position set forth in the Official Action is that it would have been obvious to make a bend in the duct so that it was parallel because it is know that a catheter is usually bent and one could change the shape of the catheter or

duct based on the "obvious to try" methodology as set forth in KSR decision.

However, this position is untenable for at least the following reasons.

The Examiner's characterization of "obvious to try" is inconsistent with the decision in KSR. KSR is based on trying finite known options that produce a predictable result.

TALLARIDA discloses several options. Each of these options includes a port 18, 18' with a stem 20, 20' extending from the duct. However, in each of the embodiments disclosed by TALLARIDA, the stem is entirely outside of the casing 12.

TALLARIDA never discloses an embodiment with a stem inside the casing and that the bend of the stem is also inside the casing. As the bend being inside the casing was not known prior to the present invention, such an embodiment would not have been obvious to try.

In addition, claim 1 also requires a portion of the duct that is closest to the reservoir is radial to a wall of the reservoir.

In the low profile embodiment in Figure 4 of TALLARIDA, the exit port 18' is axial with respect to the chamber. Thus, TALLARIDA teaches that when the stem includes a bend, the position for the exit port is axially with respect to the chamber. Accordingly, TALLARIDA implicitly teaches away from an embodiment with a radial portion and a bend in favor of an axial

exit portion when there is a bend in order to have a better anatomical fit. See column 7, line 66 to column 8, line 3 of TALLARIDA. Thus, the recited combination of a radial portion and a bend as recited in claim 1 would not have been obvious to one of ordinary skill in the art.

Claim 7 is rewritten in independent form and recites that a portion of the diffusion duct closest to the reservoir is substantially tangent to the circular wall of the reservoir.

TALLARIDA either discloses a radial port in Figure 1B or an axial port in Figure 4. As a tangential port was not known, it would not have been obvious to try such a configuration.

Claim 9 includes features that were not known prior to the present invention and recites that the casing has an opening which extends through the base wall in the vicinity of the side of the triangle opposite the tapered vertex, the opening being intended for the passage of a suture thread. See, for example, element 35 in Figure 3 above. TALLARIDA does not suggest such a hole. Accordingly, claim 9 is believed patentable regardless of the patentability of the claims on which it depends.

Claims 1-16 were rejected under 35 USC 103(a) as unpatentable over LAZORTHES 4,718,894. That rejection is respectfully traversed.

The Official Action recognizes that LAZORTHES fails to disclose a diffusion duct being substantially parallel with the

side of the triangle. The position set forth in the Official Action is that it would have been obvious to make a bend in the duct so that it was parallel because it is know that a catheter is usually bent and one could change the shape of the catheter or duct based on the "obvious to try" methodology as set forth in KSR decision.

However, this position is untenable because the characterization of LAZORTHES is inconsistent with the disclosure of this reference.

LAZORTHES discloses a single embodiment. This embodiment includes a duct 16 a fitting 19 near one end of the duct and a catheter 20 extending from the fitting. However, in each of the embodiments disclosed by LAZORTHES, the duct 16 is entirely inside of the casing 22.

LAZORTHES never discloses an embodiment with a portion of the duct outside the casing. Rather, LAZORTHES requires the entirety of the duct to be inside the casing so that the pressure in the duct can be controlled by the one-way valve 18. Thus, LAZORTHES could not be modified to include a portion of the duct outside the housing without rendering the device of LAZORTHES inoperable.

Moreover, fitting 19 could not be considered part of duct 16 because it is separate there from and is required to be separate there from in order for valve 18 to function properly. Thus, LAZORTHES does not disclose the recited diffusion duct.

In any event, the entirety of duct 16 is straight. There does not appear to be any advantage to making a portion of the duct bent. Rather, such a bend would adversely affect the pressure in the duct. Thus, such an embodiment would not have been obvious to try.

In view of this, it is apparent that LAZOTHES discloses a completely different device that works on different principles and could not be modified to meet the present claims without changing the principle of operation of LAZORTHES or rendering LAZORTHES inoperable. Thus, the proposed modification of LAZORTHES would not have been obvious to one of ordinary skill in the art.

Claim 7 is rewritten in independent form and recites that a portion of the diffusion duct closest to the reservoir is substantially tangent to the circular wall of the reservoir.

LAZORTHES neither discloses a tangential duct nor a circular wall. As these features were not features identified in the prior art, it would not have been obvious to try such a configuration.

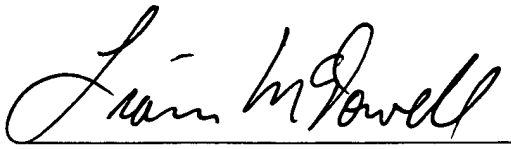
In view of the present amendment and the foregoing Remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



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